

Memo

To: Mayor and City Council
From: Mark K. Anderson
Date: 04/15/2015
Re: City Council Agenda Items for April 21, 2015

REGULAR MEETING

Item 1 – Discuss Southern Bypass between Highway 40 and Daniel Road: In response to Mr. Kelson's letter regarding the Southern Bypass alignment, staff would offer the following:

- 1) The Heber City Master Plan dated March 10, 2011 does show segment T-055 in the Street Master Plan which encroaches on the property in question. This planned roadway was also reflected in previous Street Master Plans. Also, it is not customary practice to record notice of master planned roadways on parcels that may be impacted.
- 2) To date, the City has not made a written proposal to purchase right-of-way for the Bypass. To expedite the process, the City Manager verbally indicated on April 17th, 2015 that the Heber City Council would like to exchange a 2.02 acre parcel owned by the City at 500 North 600 West for the curved 100' bypass alignment designed by the City Engineer. At this time, the City does not know when the road will be constructed, but anticipates the road being constructed in 5–15 years. The City does have the right and obligation to protect Master Planned roads by acquiring right-of-way. See Utah Code 10-9a-407 below.

10-9a-407. Effect of official maps.

- (1) Municipalities may adopt an official map.
- (2) (a) An official map does not:
 - (i) require a landowner to dedicate and construct a street as a condition of development approval, except under circumstances provided in Subsection (2)(b)(iii); or
 - (ii) require a municipality to immediately acquire property it has

designated for eventual use as a public street.

- (b) This section does not prohibit a municipality from:
- (i) recommending that an applicant consider and accommodate the location of the proposed streets in the planning of a development proposal in a manner that is consistent with Section 10-9a-508;
 - (ii) acquiring the property through purchase, gift, voluntary dedication, or eminent domain; or
 - (iii) requiring the dedication and improvement of a street if the street is found necessary by the municipality because of a proposed development and if the dedication and improvement are consistent with Section 10-9a-508.

At this time, the City is trying to negotiate the purchase of the property, rather than go through a more formal process required by eminent domain. The City can have the property appraised to consider all of the factors expressed by Mr. Kelson, but it does take more time to complete the process.

The City, participating with the Wasatch County Rural Planning Organization (RPO) has spent significant time and energy over the past 10 years to define the location and size of the proposed bypass. It was always the City's intent to pay to increase the size of a future roadway that would likely be constructed in this area to fully recognize the development potential of the 45+ acres of undeveloped land in the area. Therefore, the City did not actively pursue the purchase of the ground. Now that development is proposed in the area without a bypass, the City needs to assess what options it has available as the specific alignment is identified.

- 3) Mountainland Association of Governments has traffic models that demonstrate that construction of this roadway helps with traffic flow in the area. It is not anticipated that this roadway would be a UDOT roadway.
- 4) The City has not made formal application for Corridor Preservation Funds to purchase this right-of-way. As of yet, there is no formal approval or denial of funding for the purchase of this property.
- 5) The Heber City Manager submitted a staff report on April 15th where one of the options identified by staff was that the bypass could be abandoned in hopes that development in the area would provide a local road that would be adequate for traffic needs in the area. Another option discussed by staff was that a different T alignment at Daniel Road be acquired. (Please note that the updated traffic projections provided by Shawn Seager to the City Council on April 16th, were not available when this recommendation was made.)

The City is hopeful and desirous that the buyer will be able to find a satisfactory site on this property (taking the bypass into consideration) or another location in Heber City for the proposed business.

It appears that Three Strings would like the Council to abandon the acquisition of any right-of-way but is open to other reasonable options and negotiations. Staff does not feel that the City has caused unnecessary delays in coming to this determination. Nor does staff feel that the City's actions will result in damages to Three Strings. We believe that it is best to continue negotiations if the Council is desirous to protect a road corridor in this area. If additional negotiations are unable to resolve the issues, the City has the right to acquire the property through the process found in Utah Code 78B-6-505. (See attached) Unfortunately, this process will likely take much longer and be more expensive if no mutually acceptable solution can be found.

Factors the Council may want to consider as they discuss this issue are as follows:

- Is a road to bypass Hwy 40/189 traffic around the Hub intersection needed?
- How much right-of-way is needed for the road and is the cost of acquiring that right-of-way justified?
- The 100' wide road does carry/attract more traffic than a smaller road but could the City live with a narrower road?
- Are there options to reserve the corridor but allow Burton to initially use the corridor until the road is constructed?
- Projected traffic volumes at the Hub intersection through 2040 appear to be adequately served by UDOT.

Effective 5/13/2014

78B-6-505 Negotiation and disclosure required before filing an eminent domain action.

- (1) A political subdivision of the state that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:
- (a) before the governing body, as defined in Subsection 78B-6-504(2)(a), of the political subdivision takes a final vote to approve the filing of an eminent domain action, make a reasonable effort to negotiate with the property owner for the purchase of the property; and
 - (b) except as provided in Subsection (4), as early in the negotiation process described in Subsection (1)(a) as practicable, but no later than 14 days before the day on which a final vote is taken to approve the filing of an eminent domain action:
 - (i) provide the property owner a complete printed copy of the materials provided on the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203 regarding the acquisition of property for a public purpose and a property owner's right to just compensation; and
 - (ii) provide the property owner a written statement in substantially the following form:

"Although this letter is provided as part of an attempt to negotiate with you for the sale of your property or an interest in your property without using the power of eminent domain, [name of political subdivision] may use that power if it is not able to acquire the property by negotiation. Because of that potential, the person negotiating on behalf of the entity is required to provide the following disclosures to you.

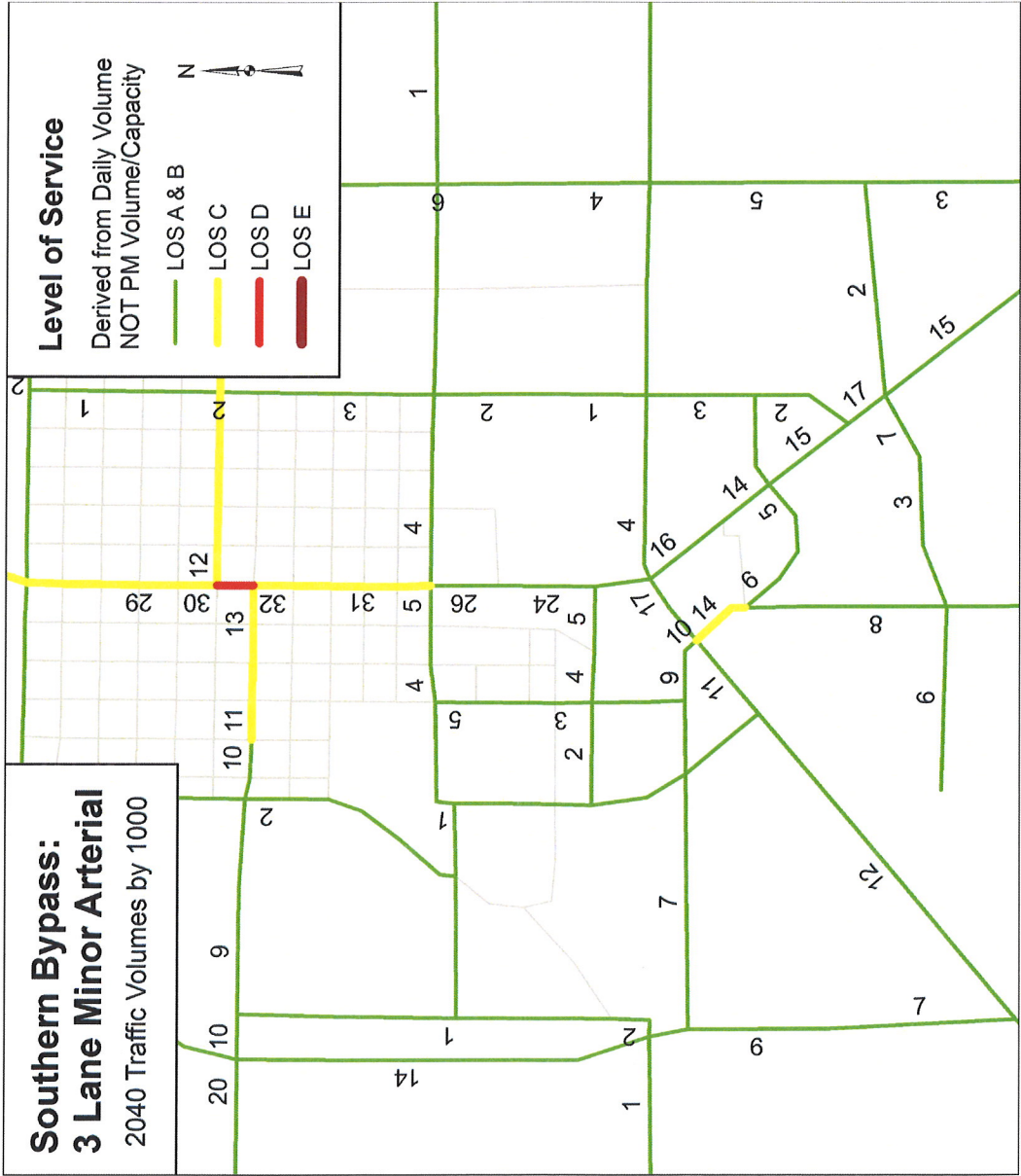
 - 1. You are entitled to receive just compensation for your property.
 - 2. You are entitled to an opportunity to negotiate with [name of political subdivision] over the amount of just compensation before any legal action will be filed.
 - a. You are entitled to an explanation of how the compensation offered for your property was calculated.
 - b. If an appraiser is asked to value your property, you are entitled to accompany the appraiser during an inspection of the property.
 - 3. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].
 - 4. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.
 - 5. If you have a dispute with [name of political subdivision] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.
 - 6. Oral representations or promises made during the negotiation process are not binding upon the entity seeking to acquire the property by eminent domain."
- (2) Except as provided in Subsection (4), the entity involved in the acquisition of property may not bring a legal action to acquire the property under this chapter until 30 days after the day on which the disclosure and materials required in Subsection (1)(b)(ii) are provided to the property owner.
- (3) A person, other than a political subdivision of the state, that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

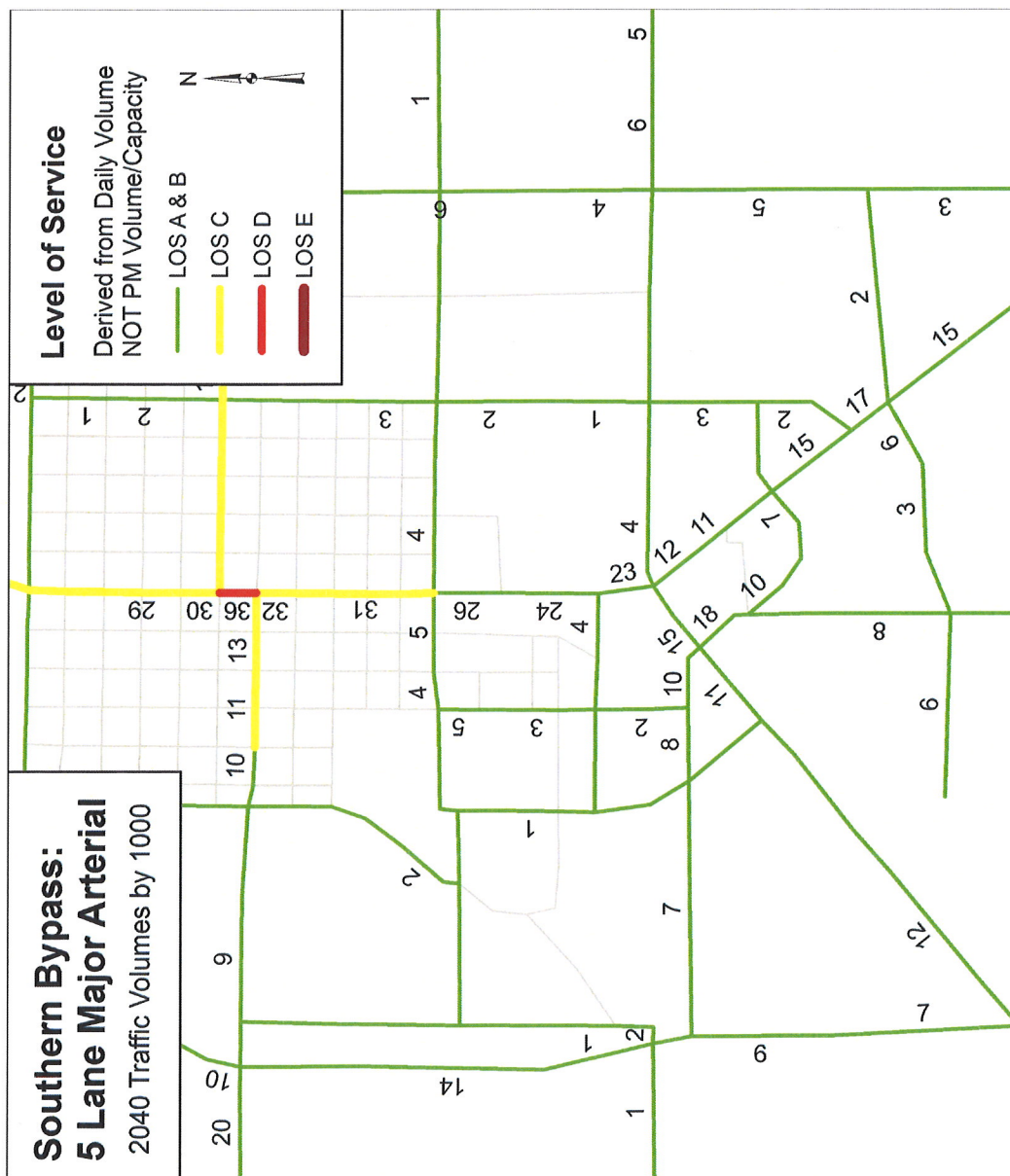
- (a) before filing an eminent domain action, make a reasonable effort to negotiate with the property owner for the purchase of the property; and
- (b) except as provided in Subsection (4), as early in the negotiation process described in Subsection (3)(a) as practicable, but no later than 30 days before the day on which the person files an eminent domain action:
 - (i) provide the property owner a complete printed copy of the materials provided on the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203 regarding the acquisition of property for a public purpose and a property owner's right to just compensation; and
 - (ii) provide the property owner a written statement in substantially the following form:

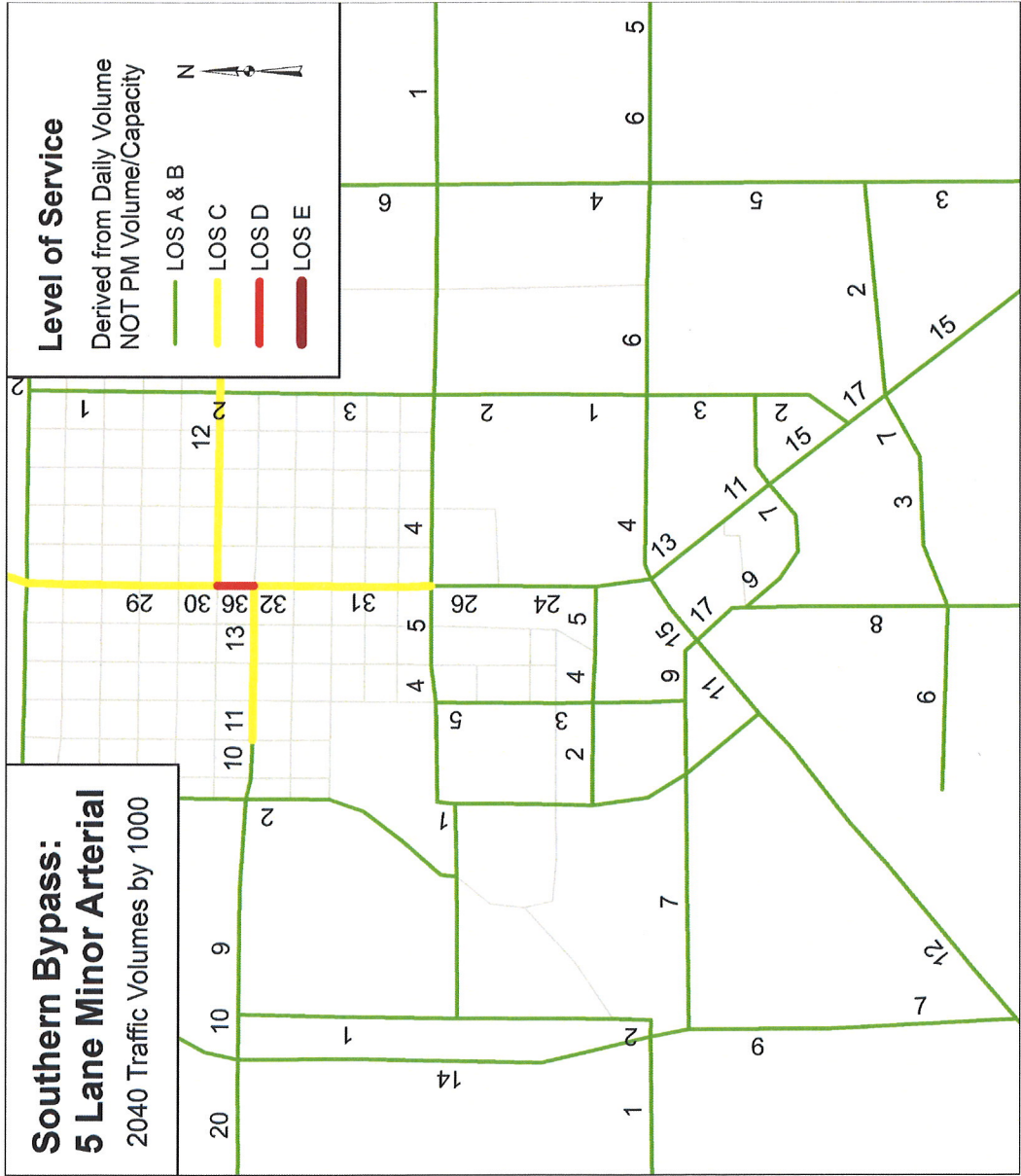
"Although this letter is provided as part of an attempt to negotiate with you for the sale of your property or an interest in your property without using the power of eminent domain, [name of entity] may use that power if it is not able to acquire the property by negotiation. Because of that potential, the person negotiating on behalf of the entity is required to provide the following disclosures to you.

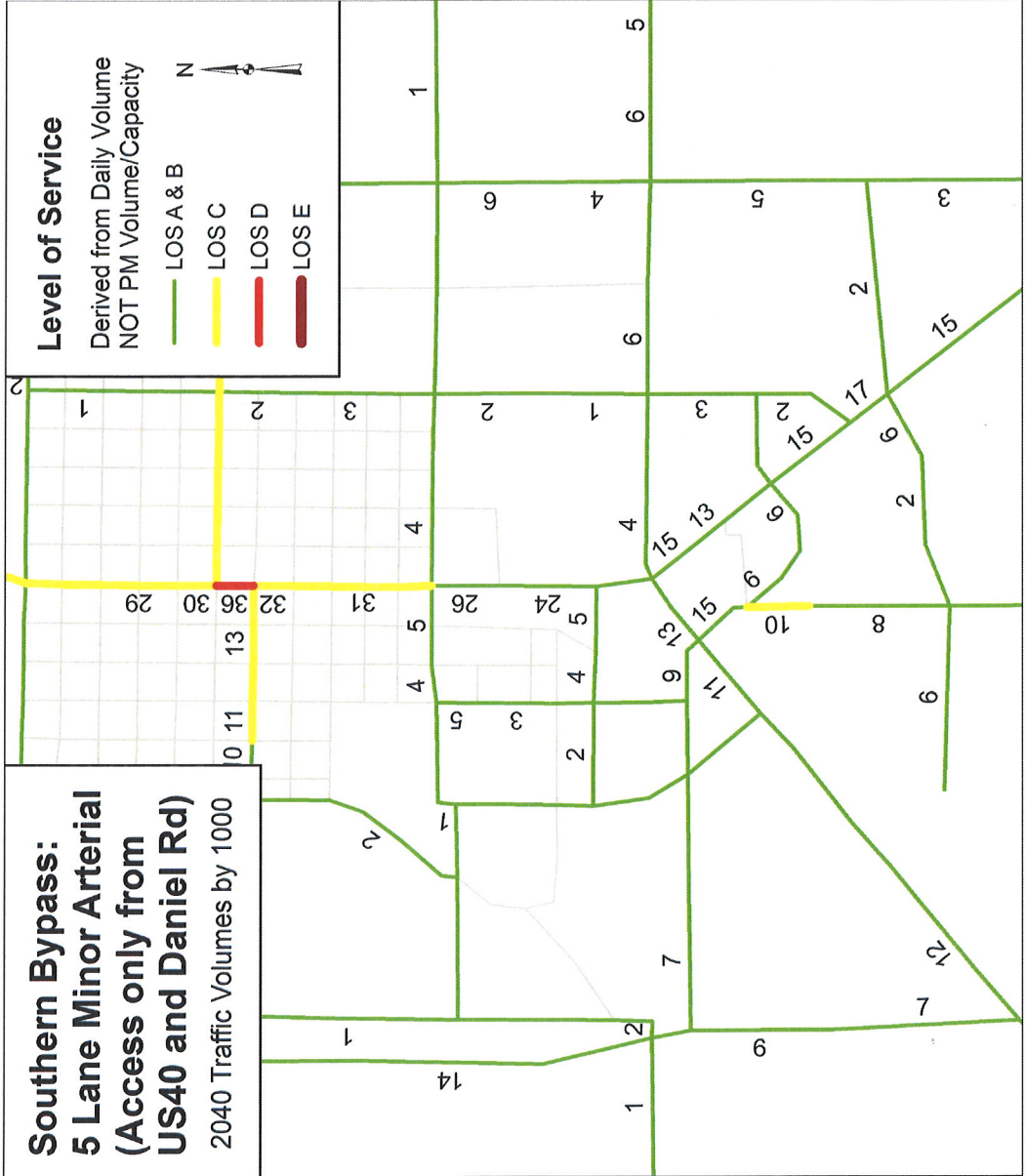
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 - 4. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.
 - 5. If you have a dispute with [name of entity] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.
 - 6. Oral representations or promises made during the negotiation process are not binding upon the entity seeking to acquire the property by eminent domain."
- (4) The court may, upon a showing of exigent circumstances and for good cause, shorten the 14-day period described in Subsection (1)(b) or the 30-day period described in Subsection (2) or (3)(b).

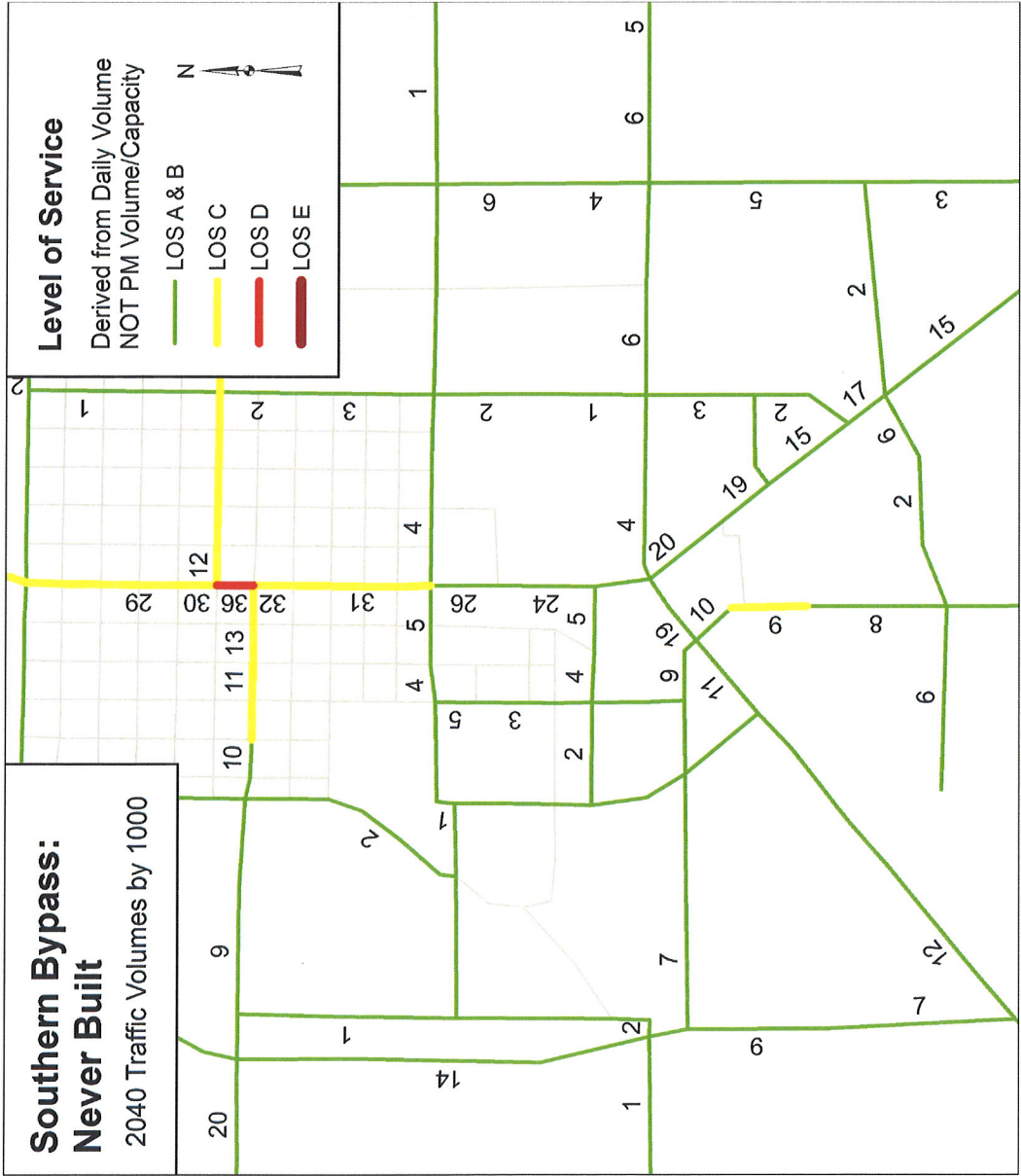
Amended by Chapter 59, 2014 General Session











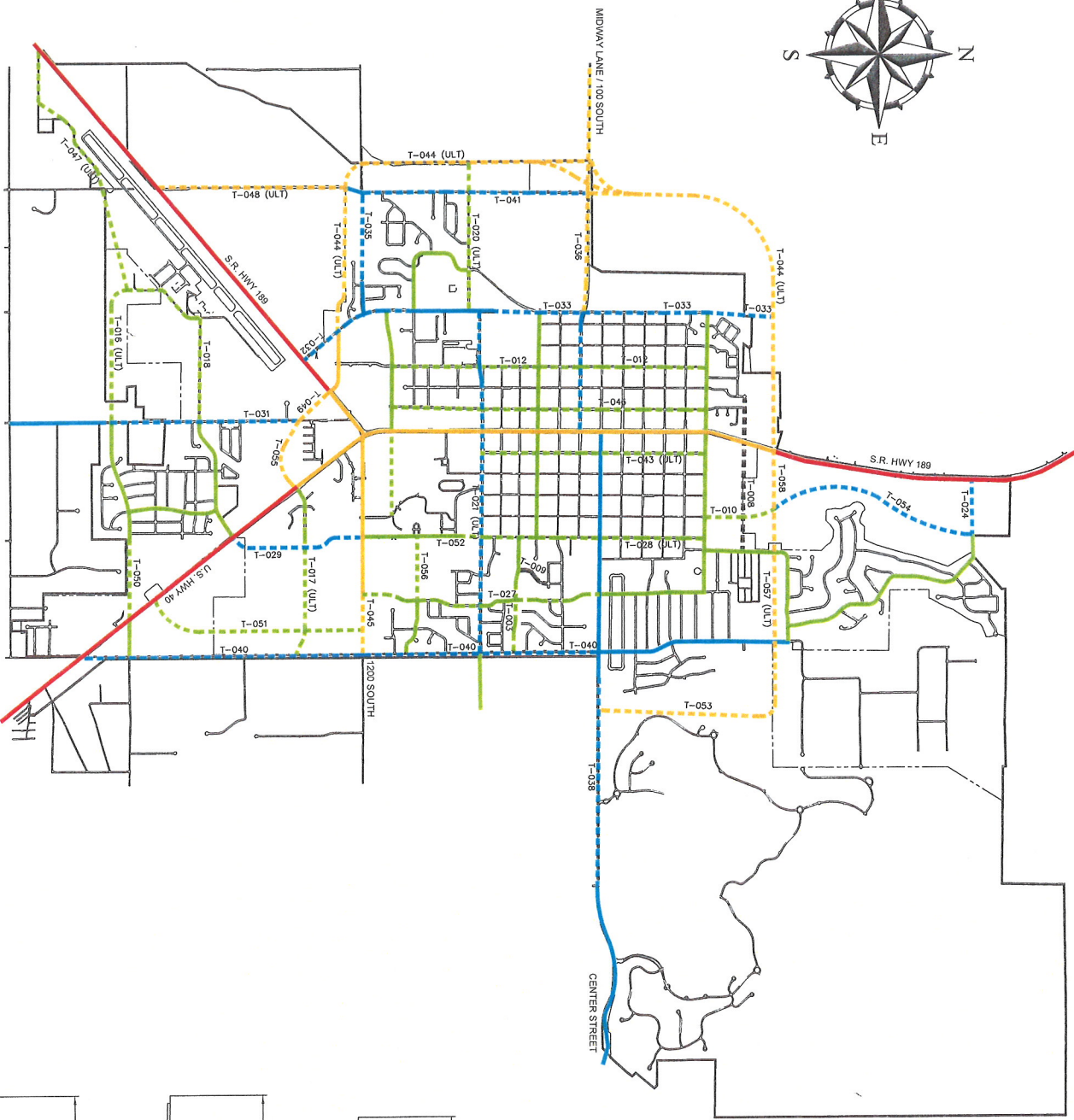
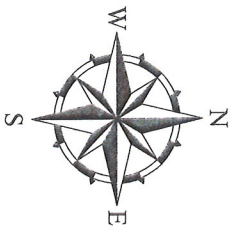


FIGURE 6-1 - AMENDMENT 1

HEBER CITY

STREET SYSTEM MASTER PLAN

LEGEND

- ULTIMATE BUILDOUT BOUNDARY
- HEBER CITY BOUNDARY
- EXISTING LOCAL STREET
- EXISTING MINOR COLLECTOR
- EXISTING MAJOR COLLECTOR
- EXISTING MINOR ARTERIAL
- EXISTING PRINCIPAL ARTERIAL
- NEW OR UPGRADED LOCAL STREET
- NEW OR UPGRADED MINOR COLLECTOR
- NEW OR UPGRADED MAJOR COLLECTOR
- NEW OR UPGRADED MINOR ARTERIAL
- NEW OR UPGRADED PRINCIPAL ARTERIAL

